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ARIZONA CORPORATION COMMISSION

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Arizona Senate Democratic Caucus
Arizona State Senate
1700 W. Washington
Phoenix, Arizona 85007

Dear Honorable Democratic Senators:

Recently, Commission Chairman Gary Pierce provided the sponsor of HB 2789 a letter of support for her bill as amended by a *strike everything* amendment. Chairman Pierce's letter states that he disagrees with the Arizona Court of Appeals opinion in *Miller v ACC* concerning its holding that the Commission's Renewable Energy Standard (RES) Rules are within the Commission's exclusive ratemaking authority. Instead, Chairman Pierce states that he believes that the RES Rules are within the Commission's permissive constitutional authority that it shares concurrently with the legislature.

I respectfully disagree with the position taken by my colleague when it comes to the Commission's ratemaking authority concerning the RES Rules, and so do the courts. When the Commission engages in ratemaking, which includes renewable energy standards, the Arizona Constitution invests the Commission with exclusive and plenary powers. Therefore, any proposed legislation that purports to set limits on the Commission's RES Rules and standards is unconstitutional.

The legal analysis conducted not only by Commission's lawyers, but also by the non-partisan Legislative attorneys, concluded that HB 2789 as amended by the *strike everything amendment* is **unconstitutional** under *Miller v ACC*. Those legal opinions are based on Arizona's Constitution and in accord with various court decisions concerning the Commission's exclusive ratemaking authority.

In light of these opinions, I cannot support the current version of HB 2789.

My opposition is not based on partisan politics; rather, my opposition is based on the oath of office that I took when I was sworn into office. That oath requires me to uphold the Arizona Constitution. Given that HB 2789 appears to be an attempt to usurp the Commission's constitutional mandate, I do not understand why any elected official would support this legislation.

Further, I find it ironic that in Arizona's Centennial year, any one would support a measure that has such obvious constitutional defects. The framers of our Constitution intentionally created the Corporation Commission as a separate branch of government with its own exclusive authority to regulate public service corporations. The Legislature cannot simply legislate away the Commission's constitutional authority. Although we may disagree on certain matters, there are processes in place to address those disagreements within the framework of the Constitution and the law.

To put it simply, HB 2789 as now amended by the *strike everything amendment* is unconstitutional. Neither my conscience nor my oath of office will allow me to support this legislation.

A handwritten signature in black ink, appearing to read "Sandra D. Kennedy". The signature is fluid and cursive, with a large, stylized initial 'S'.

Sandra D. Kennedy
Corporation Commissioner